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No. 82-136

In the Supreme Court of the United States

October Term, 1982

AMBASSADOR COLLEGE,
Petitioner,

vs.

SALLY J. GEOTZKE, etc., et al.,
Respondents.

BRIEF OF RESPONDENT SALLY J. GEOTZKE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED

Do the United States district courts have subject matter jurisdiction to review and reverse the judgment of the highest court of a state?

PARTIES TO THE PROCEEDING

The parties to the case in the United States Court of Appeals for the Eleventh Circuit were as follows:

Petitioner: Ambassador College, a California Corporation.

Respondents: Sally J. Geotzke; Honorable Hardy Gregory, Jr.; Honorable Audrey D. Jordan; and the Superior Court of Ben Hill County, Georgia.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is reported at 675 F.2d 662 (11th Cir. 1982).

STATEMENT OF THE CASE

Proceedings Below

After unsuccessfully seeking a writ of certiorari from this Court to the Supreme Court of Georgia with regard to a judgment of said Court, Ambassador College brought this action against Sally J. Geotzke, the Honorable Hardy Gregory, Jr., the Honorable Audrey D. Jordan, and the

Superior Court of Ben Hill County, Georgia seeking injunctive and declaratory relief with regard to the enforcement of a judgment entered against Ambassador College in the Superior Court of Ben Hill County. All defendants below filed motions to dismiss on the ground that the court lacked subject matter jurisdiction. The District Judge, Honorable Wilbur D. Owens, Jr., determined that the District Court lacked subject matter jurisdiction to review and reverse a final judgment of the Georgia Supreme Court and accordingly, the defendants' motions to dismiss were granted and judgment was entered thereon. Ambassador College then filed its appeal to the former United States Court of Appeals for the Fifth Circuit which affirmed the dismissal by the District Court. Ambassador College then filed its petition for writ of certiorari in this honorable Court.

Statement of Facts

In February of 1975, respondent Sally J. Geotzke's mother, Madeline Hopkins Shaffer, executed a "deed and real estate trust agreement" under which she conveyed her home place to two individuals as trustees for Ambassador College. The deed and trust agreement was not recorded, however, until July 7, 1978, in excess of three years after its execution and less than one month after the death of Madeline Hopkins Shaffer. Shortly thereafter, the two trustees quitclaimed any interest they had in the property to Ambassador College.

Upon learning of the existence of the above referenced deeds, Sally J. Geotzke, a respondent herein and the daughter and sole heir at law of Madeline Hopkins Shaffer, brought suit against Ambassador College and the two trustees seeking cancellation of the above referenced deeds as a cloud upon the title of the said property on several

grounds, including mental incapacity, lack of mental ability coupled with inadequate consideration and fraudulent misrepresentation, undue influence, unconscionability, and the testamentary character of the real estate deed and trust agreement. The complaint was filed on September 8, 1978, as Civil Action File Number 1615 in the Superior Court of Ben Hill County, Georgia, and an order that Ambassador College be served by publication was duly entered on the same day.

Attached to and as part of her complaint, Sally Geotzke also filed seventeen enumerated interrogatories and six requests for production of documents directed to Ambassador College.

Although the order for service by publication and certificate of mailing were dated September 8, 1978, Ambassador College did not file any response to said interrogatories or requests for production of documents until October 27, 1978, 49 days after the date of service. The responses of Ambassador College to said interrogatories and requests for production of documents totalled some 71 pages and with the exception of partial and incomplete answers to interrogatories 4, 6, 14, and 15 and with the exception of requests for production of documents number 1, Ambassador College failed and refused to answer any of said interrogatories or produce any of said documents, and instead filed lengthy objections thereto. Thereafter, on November 6, 1978, Ambassador College filed its answer to the complaint of Sally J. Geotzke.

On November 17, 1978, Sally J. Geotzke filed her motion for order to make discovery with regard to the above interrogatories and requests for production of documents, and said motion was set for hearing on December 12, 1978. The matter was heard by the Court at said time and although the burden of proving the validity of the objections

was upon Ambassador College, Ambassador College failed to produce any evidence whatsoever. Nevertheless, the trial court painstakingly considered those objections that could be considered on their face without substantiation by the production of evidence, and on January 15, 1979, entered a detailed order sustaining the objection of Ambassador College that certain of said interrogatories and requests for production of documents were overly broad and ordering the remainder answered or produced within 30 days of the date of the order.

Although the court ordered Ambassador College to answer interrogatories 1, 2, 3, 4, 5, 7, 8, 9, 12, 17, and parts of 15, and ordered Ambassador College to produce the documents requested in request number 6, Ambassador College only partially and incompletely answered interrogatories numbers 4, 7, 8, 9, and 17, still failing and refusing to answer the remaining interrogatories or produce the documents as ordered by the court.

Thereafter, on the 21st day of February, 1979, Sally Geotzke filed her motion for imposition of sanctions under which she specifically requested that the court grant her judgment for all the relief prayed for in her complaint due to Ambassador College's continued willful failure to comply with the order of the court regarding said discovery.

The motion for imposition of sanctions was heard by the court on the 9th day of March, 1979, and on the 15th day of March 1979, and again Ambassador College failed to produce any evidence whatsoever in substantiation of its objections, and thereafter, on March 21, 1979, the court entered an order finding that Ambassador College had willfully failed and refused to comply with the previous order of the court entered on the 15th day of January, 1979, and ordered that Sally Geotzke's motion for sanctions be granted and that Sally Geotzke have judgment

against Ambassador College for the relief prayed for unless Ambassador College filed answers and produced documents as required by said order on or before March 30, 1979.

In spite of the fact that 204 days had passed since the date of service of said interrogatories and requests for production of documents upon Ambassador College, and in spite of the fact that Ambassador College had been granted additional time to answer said interrogatories and comply with said requests for production on two separate occasions by order of the court, said Ambassador College still failed and refused to answer said interrogatories or to produce said documents as ordered by the court and thereafter on April 2, 1979, Sally J. Geotzke filed her motion for order for judgment based upon said continued willful failure to comply upon the part of Ambassador College. The matter was heard by the court on April 9, 1979, and on April 10, 1979, the court entered judgment in favor of Sally J. Geotzke finding that Ambassador College had willfully failed and refused to carry out the terms of the previous orders of the court and the court thereupon ordered the deeds cancelled as a cloud upon the title of Sally J. Geotzke, as prayed for in her complaint.

Ambassador College thereupon appealed to the Supreme Court of Georgia and the cause was argued before said court on July 11, 1979. In argument, Ambassador College discussed the objections to the interrogatories, relying mainly on its objection that the same were irrelevant to the subject matter of the action and not reasonably calculated to lead to the discovery of admissible evidence. Sally J. Geotzke argued that the objections of Ambassador College were not timely filed and therefore could not be considered, and further argued that even if they were timely filed, no evidence was presented to

substantiate that Ambassador College was entitled to any constitutional protection whatsoever. The Supreme Court of Georgia, in an opinion reported at 244 Ga. 322, 260 S.E.2d 27 (1979), affirmed the judgment of the trial court. Thereafter, Ambassador College petitioned this Court for a writ of certiorari arguing that the Supreme Court of Georgia "ignored" its constitutional objections and treated the same as going to the admissibility of the information sought rather than its production in the first place. Sally J. Geotzke contended, however, that a careful reading of the opinion of the Supreme Court of Georgia showed that the Supreme Court of Georgia did not decide the constitutional questions raised but rather affirmed the trial court on independent and adequate non-federal grounds. Sally Geotzke further argued that Ambassador College failed to present a substantial federal question for Supreme Court review. This Court denied the petition for a writ of certiorari on February 19, 1980 (*Ambassador College v. Geotzke*, 444 U.S. 1079 (1980)).

Ambassador College then filed this action in the United States District Court for the Middle District of Georgia cast as a "civil rights" complaint and essentially requested the District Court review and reverse the final judgment of the Supreme Court of Georgia on grounds that were fully and fairly litigated in both the trial court and the Supreme Court of Georgia, and which have previously and finally been presented to this Court for review. The District Court dismissed the action for lack of subject matter jurisdiction, and Ambassador College thereupon appealed to the former United States Court of Appeals for the Fifth Circuit. That court, in an opinion reported as *Ambassador College v. Geotzke, et al.*, 675 F.2d 662 (11th Cir. 1982), affirmed the District Court's dismissal. Ambassador College thereafter filed its petition for writ of certiorari.

SUMMARY OF ARGUMENT

A United States district court lacks subject matter jurisdiction to review and reverse a final judgment of the highest court of a state. The jurisdiction to review judgments of the highest court of a state involving questions of federal laws or the federal Constitution is reserved to the United States Supreme Court by appeal or writ of certiorari. *Sawyer v. Overton*, 595 F.2d 252 (5th Cir. 1979); *Olivares v. Martin*, 555 F.2d 1192 (5th Cir. 1977); *Lampkin-Asam v. Supreme Court of Florida*, 601 F.2d 760 (5th Cir. 1979); *Coogan v. Cincinnati Bar Association*, 431 F.2d 1209 (9th Cir. 1970).

The legitimate religious standing of Ambassador College was in serious question throughout the state court proceedings. Ambassador College never properly presented its constitutional objections to the trial court, nor did Ambassador College make even a threshold showing of entitlement to the requested constitutional protections, and neither the trial court nor the Supreme Court of Georgia was required to provide Ambassador College with a specific ruling on the merits of each constitutional issue which Ambassador College attempted to raise.

ARGUMENT

The United States District Court for the Middle District of Georgia Lacked Subject Matter Jurisdiction of the Matter Presented in Ambassador College's Complaint, and the District Court Properly Dismissed the Action.

Respondent Sally J. Geotzke hastens to point out that this is not a typical injunction-declaratory judgment case wherein the plaintiff seeks to enjoin an on-going state

proceeding or to enjoin a threatened state proceeding, but rather this petition seeks to have the U.S. District Court review and reverse the final judgment of the Supreme Court of Georgia, after this Court has been presented the same opportunity, and declined to do so. Respondent Sally J. Geotzke shows that such a petition cannot properly be maintained, as more fully hereinafter appears.

State courts, like federal courts, are given the right and duty to decide federal questions and protect the rights of litigants under the Constitution of the United States. As stated in *Robb v. Connolly*, 111 U.S. 624; 28 L.Ed. 542 (1884):

> "Upon the State Courts, equally with the Courts of the Union, rest the obligation to guard, enforce, and protect every right granted or secured by the Constitution of the United States and the laws made in pursuance thereof, whenever these rights are involved in any suit or proceeding before them; for, the Judges of the State Courts are required to take an oath to support that Constitution, and they are bound by it and the laws of the United States made in pursuance thereof. . . . If they fail therein and withhold or deny rights, privileges or immunities secured by the Constitution and laws of the United States, the party aggrieved may bring the case from the highest court of the state in which the question could be decided, to this Court for *final* and *conclusive* determination." (Emphasis added) *Robb*, supra, 28 L.Ed. at 546.

Taking it as established that state courts have such duty and authority, the question then becomes whether a federal district court has subject matter jurisdiction to review decisions of federal law made by the highest state court following a denial of certiorari by the Supreme Court of the United States. Sally J. Geotzke respectfully

submits that the federal district court does not have such subject matter jurisdiction.

In the case at bar, Ambassador College cast its complaint in the form of a civil rights action, asking for both injunctive and declaratory judgment relief. Sally Geotzke shows, however, that Ambassador College was in fact simply seeking a review and reversal of the final judgment of the Supreme Court of Georgia in the preceding cause. It is well settled that federal district courts do not have jurisdiction under 42 U.S.C. § 1983 or any other theory to reverse or modify the judgments of state courts. *Lampkin-Asam v. Supreme Court of Florida*, 601 F.2d 760 (5th Cir. 1979).

Even if the state court had decided the case incorrectly, the United States District Court would still lack subject matter jurisdiction to entertain the plaintiff's complaint. As stated by Judge Hill in his special concurrence in the opinion below:

> "The asserted First Amendment objection to discovery was submitted to the state trial court, the Superior Court of Ben Hill County, Georgia. That court had personal and subject matter jurisdiction. The ruling adverse to appellant was appealed to the Georgia Supreme Court which affirmed. The Supreme Court of the United States declined to grant the writ of certiorari. . .
>
> . . . Whether the case came out correctly or not in the state system, the claim asserted in the district court was properly dismissed." *Ambassador College v. Geotzke*, 675 F.2d at 666, 667.

See also in this regard *Manufacturers Record Publishing Company v. Lurer*, 268 F.2d 187 (5th Cir. 1959); and also *Warriner v. Fink*, 307 F.2d 933 (5th Cir. 1962), where the court indicates that review of the judgment by the United

States Supreme Court is the only avenue of relief available in the federal courts under the circumstances such as are present in the case at bar. In this case, Ambassador College has availed itself of the opportunity to have the cause reviewed by the Supreme Court of the United States. The Supreme Court of the United States has turned Ambassador College down, and this should finally conclude the matter.

In *Sawyer v. Overton*, 595 F.2d 252 (5th Cir. 1979), a Florida attorney brought a civil rights action seeking declaratory and injunctive relief with regard to a judgment of the Florida Supreme Court ordering the attorney's suspension from the practice of law. The district court dismissed the civil rights action for lack of subject matter jurisdiction, and the Fifth Circuit affirmed, stating:

> "Among the several answers to plaintiff's claim, a basic and dispositive one is that we hold no warrant to review final judgments of the Florida Supreme Court. That power is reserved to the Supreme Court of the United States. Complaining of constitutional violations, Mr. Sawyer has cast his complaint in the form of a civil rights suit. What he seeks, however, is simply reversal of the state court judgment. . ." *Sawyer*, supra, 595 F.2d at 252.

Certainly, the United States District Court in this case had no warrant to review the final judgment of the Supreme Court of Georgia attacked in this case. As stated in *Coogan v. Cincinnati Bar Association*, 431 F.2d 1209 (9th Cir. 1970):

> "The Civil Rights Act was not designed to be used as a substitute for the right of appeal, or to collaterally attack a final judgment of the highest court of a state and relitigate the issues which it decided. . . The final judgment of the Supreme Court is conclusive and Coogan is precluded by the doctrine of res judicata

from relitigating not only the issues which were actually involved in the disbarment proceeding, but also the issues which he might have presented. . ." *Coogan*, supra, 431 F.2d at 1211.

It is readily apparent that in the case at bar all Ambassador College sought in reality was a review of an allegedly erroneous decision of the Supreme Court of Georgia. Ambassador College now asks this Court to authorize the District Court to review and reverse the cause, when this Court has previously refused to do so. The District Court certainly has no such subject matter jurisdiction, as such a review and possible reversal was solely and exclusively within the power of this Court when the case was first presented to this Court on petition for certiorari. The fact that Ambassador College also sought declaratory judgment relief has no effect on the outcome. See *Samuels v. Mackell*, 401 U.S. 66; 91 S.Ct. 764; 27 L.Ed. 2d 688 (1971). Since the District Court lacked subject matter jurisdiction to entertain Ambassador College's complaint, the same was properly dismissed.

In its Petition for Certiorari, Ambassador College begins its argument with the unsupported assertion that the obvious religious standing of Ambassador College and its entitlement to the constitutional protections asserted is not questioned, nor could it be. (See Petition, page 10). Sally Geotzke, shows, however, that this bold assertion is simply incorrect. As has been advanced in all five courts in which this matter has appeared, including the Superior Court of Ben Hill County, the very substance of the whole case, and in particular the object of the very discovery which Ambassador College refused to answer, was all directed to the status and validity of Ambassador College as a legitimate religious institution. It quite frankly defies comprehension that Ambassador College can now contend that Sally Geotzke was not challenging its church

related status. The true fact is that Ambassador College made absolutely no showing whatsoever by any competent evidence at any hearing in the Superior Court of Ben Hill County at any point in time that it was in any way entitled to any form of protection due to alleged religious connections. The main thrust of Geotzke's lawsuit and discovery was concerned with whether or not Ambassador College was in fact related to a religious organization at all, or whether Ambassador College and its associated entities were simply vehicles for financial gain for a selfish few. To allow a party against whom discovery is sought to avoid such discovery simply by stating that they are "church related" in a case where the very nature and extent of the relationship itself is the point in question, provides at best a circuitous procedure whereby the issue is simply avoided, and cannot be reached. Ambassador College once again argues, simply put, "One cannot find out what we are, because of what we are." Certainly, the Supreme Court of Georgia correctly concluded that some sort of threshold showing of the nature of the objecting entity could be required before considering the validity of the constitutional objections advanced by Ambassador College.

Ambassador College has had its day in court, and in fact has had numerous days in court. The matter should certainly end here. The very same arguments which Ambassador College has presented to this Court have previously been presented to the Superior Court of Ben Hill County, the Supreme Court of Georgia, the United States District Court for the Middle District of Georgia, the United States Court of Appeals for the Eleventh Circuit, and to this Court on its former petition for writ of certiorari. The present petition of Ambassador College addresses itself to the "merit" of its purported constitutional objections. The petition ignores the true issue, and that is at what points can the alleged "merits" be considered.

Respondent Sally Geotzke shows that the final point for consideration on the merits was upon consideration of the previous petition for writ of certiorari to this Court, and when that was denied, the matter ended once and for all, right or wrong. The writ of certiorari should therefore be denied.

CONCLUSION

All litigation must end somewhere. It is apparent that the petition in this case sought to have the District Court review and reverse the judgment of the Supreme Court of Georgia, an action which this Court has already refused to take. The District Court clearly lacks subject matter jurisdiction to entertain such a petition and furthermore the complaint shows on its face that the issues presented thereby are res judicata. The fact that Ambassador College contends that the Supreme Court of Georgia was wrong in its judgment or refused to entertain its constitutional arguments does not change the fact that Ambassador College has had its day in court.

The United States Court of Appeals for the Eleventh Circuit correctly affirmed the District Court's dismissal for lack of subject matter jurisdiction, and for these reasons and each and every reason presented above, Respondent Sally J. Geotzke respectfully requests that the writ of certiorari be denied.

Respectfully submitted,

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